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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the Matter of)	
)	Arizona Supreme Court No. R-11-____
)	
THE ARIZONA RULES)	
OF CRIMINAL PROCEDURE)	
)	PETITION TO AMEND THE ARIZONA
)	RULE OF CRIMINAL PROCEDURE 18.3
)	
_____)	

PETITION TO AMEND THE ARIZONA RULES OF CRIMINAL PROCEDURE

Pursuant to Rule 28, Rules of the Supreme Court, Mark W. Armstrong, Staff Attorney, Arizona Supreme Court, petitions the Court to amend the Arizona Rules of Criminal Procedure, as reflected in the attachment hereto.

I. INTRODUCTION AND BACKGROUND

In 1994, the Arizona Supreme Court Committee on More Effective Use of Jurors issued a report recommending the protection of juror privacy during voir dire, as well as the alleviation of apprehension that jurors may have concerning post-trial contact with and retaliation by individuals involved with a case. *See* Report of the Arizona Supreme Court Committee on More Effective Use of Juries, Jurors: The Power of 12 (1994). Arizona Rule of Criminal Procedure 18.3 was accordingly amended in 1995 to limit the type of biographical information about

prospective jurors that may be disclosed and to mandate that the court keep jurors' telephone numbers and addresses confidential. 17 A.R.S. Rules Crim. Proc., Rule 18.3 (Supp. 1996). However, an official comment to the rule, adopted with the original rule in 1973, was not revised despite the fact that the comment conflicts with the rule as amended.

This petition proposes that Arizona Rule of Criminal Procedure 18.3 be revised to eliminate text in the comment that, due to the 1995 amendment, now contradicts the rule.

II. SUMMARY OF THE PROPOSED AMENDMENTS TO THE ARIZONA RULES OF CRIMINAL PROCEDURE

Comment to Rule 18.3

The comment in question¹ concerns “biographical information” about potential jurors that is furnished to each party prior to voir dire examination. Enumerated in the comment are various biographical details that are required to be disclosed, including jurors' addresses. As a result of the 1995 amendment, however, Rule 18.3 no longer refers simply to the disclosure of “biographical information” that is detailed in the comment, which was the case when the rule was initially enacted. Rather, the rule itself provides a list of specific, limited information to be released to the parties. Moreover, the rule now requires that the telephone numbers and addresses of jurors be kept confidential absent a showing of good cause for disclosure. Consequently, while the comment and Rule 18.3 as amended provide for divulging certain similar categories of information, the comment demands the disclosure of information which the rule prohibits from being revealed.

Although it is evident that the comment is at variance with the current requirements of Rule 18.3, the reason for providing no modification to the comment when the rule was amended in 1995 is unclear. Nonetheless, as mentioned, the revision of the rule followed a report that

¹ Rule 18.3 includes one other comment that relates to a 1993 amendment and is not pertinent here.

advocated for enhanced protection of jurors, and the desire to establish this protection is plainly reflected in the subsequent amendment. Therefore, the comment should be changed to correspond to the rule, thereby eliminating the discrepancy between the two provisions and ensuring the execution of the policy goals underlying the 1995 revision.

III. CONCLUSION

Petitioner respectfully requests that the Court consider this petition and proposed rule change at its earliest convenience. Petitioner additionally requests that the petition be circulated for public comment until May 20, 2012, and that the Court adopt the proposed rule change as it currently appears or as modified in light of comments received from the public, with an effective date of January 1, 2013.

DATED this _____ day of December, 2011.

Mark W. Armstrong
Staff Attorney, Arizona Supreme Court

ATTACHMENT²

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 18.3. Jury information

Prior to the voir dire examination on the day when jury selection is commenced, the parties shall each be furnished with a list of the names of the panel of prospective jurors called for the case together with the zip code, employment status, occupation, employer, residency status, education level, prior jury duty experience, and felony conviction status as to each potential juror within a specified time schedule as established by the jury commissioner, if one is utilized, or the court, if one is not. The jury commissioner shall obtain and maintain such information as to each potential juror in a manner and form to be approved by the supreme court, but all information obtained shall be limited to use for the purpose of jury selection only. The court shall keep all jurors' home and business telephone numbers and addresses confidential unless good cause is shown to the court which would require such disclosure.

Amended July 28, 1993, effective Dec. 1, 1993; Oct. 24, 1995, effective Dec. 1, 1995.

Comment

Basic biographical information furnished to the parties will assist them in making a more intelligent exercise of challenges for cause or peremptory challenges.

Some of the information is available through the questionnaires returned by jurors in the original selection of prospective jurors for service [Ariz.Rev.Stat.Ann. § 21-311 et seq. and especially Ariz.Rev.Stat.Ann. § 21-314 (Supp.1972)]. A standard form is not advisable due to the difference of resources of the various counties, and two of the counties may be using computers for preparation of daily jury lists. A more flexible system must be available for use by the various counties, yet the same basic information is necessary for use in making intelligent use of challenges. The differences among the counties will be in the manner and form that such information is furnished to the parties.

~~The basic information must include at least: names, addresses, occupation, and age of both juror and spouse, employer's names and addresses, number of years employed, marital status and number and age of children, length of residence in state and county, ownership of real estate, extent of education, length of experience, if any, as a law enforcement officer, previous service as a juror together with designation of court and length of service, and what courses in law, if any, have been taken.~~

Committee Comment to 1993 Amendment

The 1993 amendment to Rule 18.3 added the phrase “or the court” to permit the jury information to be obtained by either a jury commissioner or the court, as not all limited jurisdiction courts employ a jury commissioner.

² Changes or additions in rule text are indicated by underscoring and deletions from text are indicated by ~~strikeouts~~.